

Hon. \_\_\_\_\_

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE**

UNITED STATES OF AMERICA, ON  
BEHALF OF THE NATIONAL OCEANIC  
AND ATMOSPHERIC  
ADMINISTRATION AND THE UNITED  
STATES DEPARTMENT OF THE  
INTERIOR; THE STATE OF  
WASHINGTON THROUGH THE  
WASHINGTON DEPARTMENT OF  
ECOLOGY; MUCKLESHOOT INDIAN  
TRIBE; SUQUAMISH TRIBE,

Plaintiffs,

v.

VIGOR INDUSTRIAL LLC, and  
EXXON MOBIL CORPORATION,

Defendants.

Case No. CV- 21-44

COMPLAINT

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U. S. DEPARTMENT OF JUSTICE  
Environment and Natural Resources Division  
7600 Sand Point Way NE  
Seattle, WA 98115

1 Plaintiffs United States of America, by authority of the Attorney  
2 General, on behalf of the National Oceanic and Atmospheric Administration of the  
3 Department of Commerce and the Department of the Interior; State of Washington  
4 through the Washington Department of Ecology; Suquamish Tribe; and  
5 Muckleshoot Indian Tribe, allege as follows:

6 **I. GENERAL ALLEGATIONS**

7 1. This is a civil action under Section 107(a) of the Comprehensive  
8 Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C.  
9 § 9607(a); Section 311 of the Clean Water Act (CWA), 33 U.S.C. § 1321; Section  
10 1002(b) of the Oil Pollution Act (OPA), 33 U.S.C. § 2702(b); and the Model  
11 Toxics Control Act (MTCA), RCW 70A.305, for damages for injury to,  
12 destruction of, or loss of natural resources resulting from the release of hazardous  
13 substances and discharges of oil into the Lower Duwamish River and Elliott Bay in  
14 Seattle, Washington.

15 **II. JURISDICTION AND VENUE**

16 2. This Court has jurisdiction over this case pursuant to Sections 107 and  
17 113(b) of CERCLA, 42 U.S.C. §§ 9607 and 9613(b); Section 311(n) of the CWA,  
18 33 U.S.C. § 1321(n); Section 1017(b) of OPA, 33 U.S.C. § 2717(b); and 28 U.S.C.  
19 §§ 1331, 1345 and 1367(a).

20 3. Venue is proper in this district pursuant to Section 113(b) of  
21 CERCLA, 42 U.S.C. § 9613(b); Section 1017(b) of OPA, 33 U.S.C. § 2717(b); and  
22 28 U.S.C. § 1391(b) and (c).

23 **III. THE SITE**

24 4. The Lower Duwamish River is a highly industrialized river that flows  
25 into Elliott Bay in Seattle, Washington.

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1           5.     The Lower Duwamish River includes the in-waterway portions of  
2 three Superfund Sites: the Harbor Island Site (located south of downtown Seattle,  
3 Washington, including the East Waterway and West Waterway that flow from the  
4 south end of Harbor Island north to Elliott Bay), the Lower Duwamish Waterway  
5 Site (approximately 5 miles of the Duwamish River from the southern tip of  
6 Harbor Island south to the area around the Norfolk Combined Sewer  
7 Overflow/Storm Drain in Tukwila, Washington), and the Lockheed West Site  
8 (areas in and around the site formerly known as Lockheed Shipyard No. 2, located  
9 near the confluence of the West Waterway and Elliott Bay).

10           6.     The “Lower Duwamish River” as used in this Complaint means any  
11 portion of the river (including the shoreline, intertidal areas, tributaries, estuaries  
12 and bottom sediments) in the State of Washington where hazardous substances and  
13 oil originating from the property identified in Appendix A have come to be  
14 located.

15           7.     “Elliott Bay” as used in this Complaint means any portion of Elliott  
16 Bay (including the shoreline, intertidal areas, tributaries, estuaries and bottom  
17 sediments) in the State of Washington where hazardous substances and oil  
18 originating from the property identified in Appendix A have come to be located.

19           8.     The Lower Duwamish River and Elliott Bay are contaminated with oil  
20 and a variety of hazardous substances, including arsenic, antimony, cadmium,  
21 chromium, copper, mercury, nickel, lead, zinc, bis(2 ethylhexyl) phthalate,  
22 hexachlorobenzene, hexachlorobutadiene, tributyltin (TBT), polychlorinated  
23 biphenyls (PCBs), and polycyclic aromatic hydrocarbons (PAHs). Overall, the  
24 Trustees have identified the presence of over 30 hazardous substances in the  
25 sediments of the Lower Duwamish River.



1 subsidiary, Todd Shipyards Corp., have owned and operated a shipyard for the  
2 construction and repair of various types of vessels at the property. At relevant  
3 times, Vigor managed, directed, or controlled environmental compliance at the  
4 Facility owned and operated by Todd.

5 15. Defendant Exxon Mobil Corporation (“Exxon Mobil”), and its  
6 predecessors, owned a portion of the property identified in Appendix A from about  
7 1906 to August 1967. During this time period, Exxon Mobil, and its predecessors,  
8 operated a petroleum storage facility at the property. Exxon Mobil sold the  
9 property to Todd Shipyards Corp. in or around August 1967.

10 16. The property identified in Appendix A is a facility within the meaning  
11 of Section 101(9) of CERCLA, 42 U.S.C. § 9601(9). Investigations have detected  
12 oil and hazardous substances in soils, groundwater or sediments at and near the  
13 facility.

14 17. During Defendants’ periods of ownership and operation of the facility  
15 identified in Appendix A, oil and hazardous substances were discharged and  
16 released to the Lower Duwamish River and Elliott Bay through direct discharge or  
17 other process discharges, and some of these hazardous substances are found in the  
18 sediments of the Lower Duwamish River and Elliott Bay. Discharges were to  
19 “navigable waters” or “adjoining shorelines” within the meaning of Section  
20 1002(a) of OPA, 33 U.S.C. § 2702(a), and Section 311(b)(3) of the CWA, 33  
21 U.S.C. § 1321(b)(3). Hazardous substances released from the property and found  
22 in the sediments of the Lower Duwamish River and Elliott Bay include, but are not  
23 limited to, PAHs, PCBs, TBT and metals.

## 24 VI. FIRST CLAIM FOR RELIEF

25 18. Plaintiffs reallege paragraphs 1 through 17.

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1        19. Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), provides in  
2 pertinent part, as follows:

3        Notwithstanding any other provision or rule of law, and subject only to the  
4 defenses set forth in subsection (b) of this section

5  
6        (1) the owner and operator of a vessel or a facility,

7  
8        (2) any person who at the time of disposal of any hazardous substance  
9 owned or operated any facility at which such hazardous substances were  
10 disposed of,

11  
12        ...shall be liable for, . . .

13  
14        (C) damages for injury to, destruction of, or loss of natural resources,  
15 including the reasonable costs of assessing such injury, destruction, or loss  
16 resulting from such a release; . . .

17  
18        20. Materials disposed of and released in the Lower Duwamish River and  
19 Elliott Bay by Defendants include, but are not limited to, PAHs, PCBs, TBT and  
20 metals which are hazardous substances within the meaning of Section 101(14) of  
21 CERCLA, 42 U.S.C. § 9601(14).

22        21. The property owned and operated, or formerly owned and operated,  
23 by Defendants, identified in Appendix A, is a facility within the meaning of  
24 Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

22. Releases of hazardous substances, including but not limited to PAHs, PCBs, TBT and metals have occurred in the Lower Duwamish River and Elliott Bay within the meaning of Sections 101(22) of CERCLA, 42 U.S.C. § 9601(22). The releases of these hazardous substances in the Lower Duwamish River and Elliott Bay from the facility owned and operated, or formerly owned and operated, by Defendants have resulted in injury to, destruction of, or loss of natural resources within the trusteeship of one or more of the Plaintiffs.

23. Defendants are each a person within the meaning of Section 107 of CERCLA, 42 U.S.C. § 9607.

24. Defendants are liable to Plaintiffs for natural resource damages resulting from releases of hazardous substances pursuant to Section 107(a)(4)(C) of CERCLA, 42 U.S.C. § 9607(a)(4)(C).

## **VII. SECOND CLAIM FOR RELIEF**

25. Plaintiffs reallege paragraphs 1 through 24.

26. Section 1002(a) of OPA, 33 U.S.C. § 2702(a), provides in pertinent part, as follows:

Notwithstanding any other provision or rule of law, and subject to the provisions of this Act, each responsible party for a vessel or a facility from which oil is discharged, or which poses the substantial threat of a discharge of oil, into or upon the navigable waters or adjoining shorelines or the exclusive economic zone is liable for the removal costs and damages specified in subsection (b) of this section that result from such incident.

27. Section 1002(b)(2)(A) of OPA, 33 U.S.C. § 2702(b)(2)(A), makes responsible parties liable for:

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1 Damages for injury to, destruction of, loss of, or loss of use of, natural  
2 resources, including the reasonable costs of assessing the damage, which  
3 shall be recoverable by a United States trustee, a State trustee, an Indian  
4 Tribe trustee, or a foreign trustee.

5  
6 28. The property owned and operated, or formerly owned and operated,  
7 by Defendants, identified in Appendix A, is a facility within the meaning of  
8 Sections 1001(9) and 1002 of OPA, 33 U.S.C. §§ 2701(9) and 2702.

9 29. Section 1001(32) of OPA, 33 U.S.C. § 2701(32), makes owners and  
10 operators of onshore facilities responsible parties for damages resulting from the  
11 discharge of oil from those facilities.

12 30. The discharge of oil into the Lower Duwamish River, Elliott Bay or  
13 adjoining shorelines from the facility owned and operated, or formerly owned and  
14 operated, by Defendants identified in Appendix A has resulted in injury to,  
15 destruction of, or loss of natural resources within the trusteeship of one or more of  
16 the Plaintiffs.

17 31. Defendants are liable to Plaintiffs for natural resource damages  
18 resulting from discharges of oil pursuant to Section 1002 of OPA, 33 U.S.C. §  
19 2702.

### 20 **VIII. THIRD CLAIM FOR RELIEF**

21 32. Plaintiffs the United States and the State of Washington reallege  
22 paragraphs 1 through 31.

23 33. Section 311(b)(3) of the CWA, 33 U.S.C. § 1321(b)(3), provides in  
24 pertinent part, as follows:

1 The discharge of oil or hazardous substances (i) into or upon the navigable  
2 waters of the United States, adjoining shorelines, or into or upon the waters  
3 of the contiguous zone . . . or which may affect natural resources belonging  
4 to, appertaining to, or under the exclusive management authority of the  
5 United States . . . in such quantities as may be harmful as determined by the  
6 President under paragraph (4) of this subsection, is prohibited . . . .

7  
8 34. Section 311(f)(2) of the CWA, 33 U.S.C. § 1321(f)(2), provides in  
9 pertinent part, as follows:

10  
11 Except where an owner or operator of an onshore facility can prove that a  
12 discharge was caused solely by (A) an act of God, (B) an act of war, (C)  
13 negligence on the part of the United States Government, or (D) an act or  
14 omission of a third party without regard to whether an such act or omission  
15 was or was not negligent, or any combination of the foregoing clauses, such  
16 owner or operator of any such facility from which oil or a hazardous  
17 substance is discharged in violation of subsection (b)(3) of this section shall  
18 be liable to the United States Government for the actual costs incurred under  
19 subsection (c) of this section for the removal of such oil or substance by the  
20 United States Government

21 . . . .

22  
23 35. Section 311(f)(4) of the CWA, 33 U.S.C. § 1321(f)(4), provides in  
24 pertinent part, as follows:

The costs of removal of oil or a hazardous substance for which the owner or operator of a vessel or onshore or offshore facility is liable under subsection (f) of this section shall include any costs or expenses incurred by the Federal Government or any State government in the restoration or replacement of natural resources damaged or destroyed as a result of a discharge of oil or a hazardous substance in violation of subsection (b) of this section.

36. The property owned and operated, or formerly owned and operated, by Defendants identified in Appendix A is an onshore facility within the meaning of Section 311(f)(1) of the CWA, 33 U.S.C. § 1321(f)(1).

37. There have been discharges of hazardous substances in harmful quantities into the Lower Duwamish River, Elliott Bay and adjoining shorelines from the facility.

38. Discharges of hazardous substances from the facility into the Lower Duwamish River, Elliott Bay or adjoining shorelines have affected, damaged or destroyed natural resources belonging to, appertaining to, or under the exclusive management authority of the United States.

39. Defendants are liable to the United States and State of Washington for natural resource damages resulting from discharges of hazardous substances into the Lower Duwamish River, Elliott Bay, or adjoining shorelines pursuant to Section 311(f) of the CWA, 33 U.S.C. § 1321(f).

#### **IX. FOURTH CLAIM FOR RELIEF**

40. Plaintiff the State of Washington realleges paragraphs 1 through 39.

41. MTCA, RCW 70A.305.040, provides in pertinent part as follows:

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1 (1) Except as provided in subsection (3) of this section, the following  
2 persons are liable with respect to a facility:

3  
4 (a) The owner or operator of the facility;

5  
6 (b) Any person who owned or operated the facility at the time of disposal or  
7 release of the hazardous substances;

8  
9 (c) Any person who owned or possessed a hazardous substance and who by  
10 contract, agreement, or otherwise arranged for disposal or treatment of the  
11 hazardous substance at the facility, or arranged with a transporter for  
12 transport for disposal or treatment of the hazardous substances at the facility,  
13 or otherwise generated hazardous wastes disposed of or treated at the  
14 facility;

15  
16 (d) Any person (i) who accepts or accepted any hazardous substance for  
17 transport to a disposal, treatment or other facility selected by such person,  
18 from which there is a release or a threatened release for which remedial  
19 action is required, unless such facility, at the time of disposal or treatment,  
20 could legally receive such substance; or (ii) who accepts a hazardous  
21 substance for transport to such a facility and has reasonable grounds to  
22 believe that such facility is not operated in accordance with RCW 70A.300;  
23 and

1 (e) Any person who both sells a hazardous substance and is responsible for  
2 written instructions for its use if (i) the substance is used according to the  
3 instructions and (ii) the use constitutes a release for which remedial action is  
4 required at the facility.

5  
6 (2) Each person who is liable under this section is strictly liable, jointly and  
7 severally, for . . . all natural resource damages resulting from the releases or  
8 threatened releases of hazardous substances.

9  
10 42. Materials disposed of and released in the Lower Duwamish River and  
11 Elliott Bay from the property owned and operated, or formerly owned and  
12 operated, by Defendants identified in Appendix A include hazardous substances  
13 within the meaning of RCW 70A.305.020(13).

14 43. The property identified in Appendix A is a facility within the meaning  
15 of RCW 70A.305.020(8).

16 44. Releases or threatened releases of hazardous substances have occurred  
17 in the Lower Duwamish River and Elliott Bay within the meaning of RCW  
18 70A.305.020 and 70A.305.040.

19 45. The natural resources that have been and continue to be injured,  
20 destroyed, or lost by the release of hazardous substances from the facility owned or  
21 operated, or formerly owned or operated, by the Defendants include fish, shellfish,  
22 invertebrates, birds, sediments, and other such natural resources.

23 46. The State of Washington has incurred and continues to incur costs  
24 related to the assessment of injury to natural resources caused by the releases of  
25

1 hazardous substances from the facility owned or operated, or formerly owned or  
2 operated, by the Defendants identified in Appendix A.

3 47. Pursuant to RCW 70A.305.040(2), Defendants are jointly and  
4 severally liable to the State of Washington for all damages to natural resources in  
5 the Lower Duwamish River and Elliott Bay, resulting from the release of  
6 hazardous substances at or from the Defendants' owned and operated, or formerly  
7 owned and operated, facility.

8 **X. REQUEST FOR RELIEF**

9 WHEREFORE, Plaintiffs request that this Court enter judgment against  
10 Defendants:

11 (1) For damages for injury to natural resources resulting from the discharges  
12 of oil or releases of hazardous substances in the Lower Duwamish River and Elliott  
13 Bay, including the cost of assessing such damages; and

14 (2) Awarding Plaintiffs such other and further relief as this Court may deem  
15 appropriate.

16  
17 Dated: January 14, 2021

18  
19 UNITED STATES OF AMERICA

20 JONATHAN D. BRIGHTBILL  
21 Principal Deputy Assistant Attorney General  
22 Environment & Natural Resources Division  
23 U.S. Department of Justice  
24 Washington, D.C. 20530

25  
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/s ERIKA M. WELLS

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1 (360) 394 8488  
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3 MUCKLESHOOT INDIAN TRIBE  
4

5 /s Robert L. Otsea  
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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on January 14, 2021, a copy of the foregoing, COMPLAINT, was served by the Court's CM/ECF system upon all persons registered to receive filings in this matter. In addition, I served a copy via electronic mail to the following counsel:

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s/ Erika M. Wells